institutions of capital, giving employment to numbers of people in every station, from the humblest mechanic to the greatest capitalist, and affording by their securities means of investment to innumerable people not otherwise concerned in them. And in the benefit conferred by the conveniences they offer in the case of railroads, telegraph companies, &c., every individual is a sharer; and it may safely be said that not one of these who complain loudest of the injury done them by the construction of railroads, would consent to their abolition or to a prohibition of further railroad building *over some one else's land.*

On the other hand there is the plain fact that the value of property is often wholly destroyed or nearly so, when not a square inch of it is taken. And it is a mockery of justice to deny to the owner compensation upon the technical ground that there has been no physical taking. No rule will be absolutely satisfactory—it cannot be hoped that general convenience and private rights can both be protected without injury to either—they are too frequently hopelessly in conflict. But on the whole the rule which limits compensation to cases where the injury is direct, is probably the safest—comprehending it in all cases where a house is shaken, rendered uncomfortable by smoke, etc., in each of which cases there is a direct injury to the property itself. But where the injury is consequential only, as where the sound of the cars renders it less desirable as a dwelling, there being no effect on the house, but only on the dweller in it, there should be no compensation; such a dweller must console himself with the thought that in building up the industries and conveniences of the community, some individuals must necessarily suffer and that others have suffered before him for conveniences which he now enjoys. And with the further realization (and this point is noticed by Judge REDFIELD in *Hatch* v. *Vermont Cent. Railroad Co.*, *supra*), that had his dwelling been reduced in value by the adjoining dwelling having been made into a store by a private individual, he would never for a moment have felt himself entitled to compensation, and this is precisely analogous to the indirect and consequential injury by a railroad. In such cases the damage will rarely be very great, and no very serious hardship will be worked.

If it be objected that the proposed rule is artificial and not strictly logical, this may be admitted. But it is believed that it can fairly be said of it, that it is the best which can be adopted consistently with a sound public policy.

LUCIUS S. LANDRETH.
Philadelphia.

United States District Court for Oregon.

HEENRICH v. PULLMAN, &c., CO.

A master is liable for the act of his servant when done within the scope or general course of his employment, although done contrary to the master's orders.

A car company is responsible to a passenger injured by the negligence of its porter in letting a pistol, carried by him, fall upon the floor of the car, although he was carrying the pistol for a passenger and he was expressly forbidden to carry any baggage for passengers.

Julius Moreland, for plaintiff.

Charles B. Bellinger, for defendant.

DEADY, J., delivered the opinion of the Court.

This action is brought by the plaintiff, a citizen of Minnesota, against the defendant, a corporation formed under the laws of Illinois, to recover $25,000 damages for an injury to her person, received while travelling as a passenger on a Pullman palace car attached to a train on the Northern Pacific Railway running from St. Paul to Portland, and caused as alleged, by the negligent handling of a pistol by the porter in charge of said car while "in the discharge of his duty as such porter," and "while attending to the defendant's business," whereby the same fell on the car floor and was discharged, the ball entering the thigh of the plaintiff and inflicting a dangerous wound therein.

The answer of the defendant controverts the allegation of the plaintiff that the porter "was in the discharge of his duty" when he let the pistol fall; and also contains a plea in bar of the action —that the pistol mentioned in the complaint was the property of a passenger on said train; that said porter received it from the owner and was carrying it through the car at the request of said owner, and not otherwise, at the time of the discharge and wounding in the complaint mentioned; and that it is one of the defendant's rules and directions to all its car porters that they are not permitted to receive any package, baggage or article of luggage from passengers or to become custodians thereof, which rule and order was at the time of the taking and carrying of said pistol by said porter, well known to him; and that said porter in so receiving and carrying said pistol was acting in violation of the defendant's orders.

To this new matter the plaintiff demurs, for that it does not constitute a defence to the action.

A corporation is liable to the same extent as a natural person for an injury caused by its servant in the course of his employment: *Moore* v. *Fitchburg Railroad Co.*, 4 Gray 465; *Thayer* v. *Boston*, 19 Pick. 511.

In Story on Agency, sec. 452, it is laid down that a principal is liable to third persons in a civil suit for the frauds, deceits, concealments, misrepresentations, torts, negligences and other mal-

feasance and omissions, although the principal did not authorize or justify, or participate in, or, indeed, know of such misconduct, or even if he forbade the acts or disapproved of them. In all such cases the rule applies, *respondeat superior;* and it is founded on public policy and convenience; for in no other way could there be any safety to third persons in their dealings, either directly with the principal, or indirectly with him through the instrumentality of agents. In every such case the principal holds out his agent as competent and fit to be trusted, and thereby, in effect, he warrants his fidelity and good conduct in all matters within the scope of his agency.

In *Ramsden* v. *Boston & Albany Railroad Co.*, 104 Mass. 117, it was held, that the corporation was liable to an action for an assault and battery, for the act of its conductor in wrongfully and unlawfully attempting to seize the parasol of a passenger for her fare. In delivering the opinion of the court Mr. Justice GRAY said: "If the act of the servant is within the general scope of his employment, the master is equally liable, whether the act is wilful or merely negligent, or even if it is contrary to an express order of the master."

In *The Phila., &c., Railroad Co.* v. *Derby*, 14 How. 468, a servant of the corporation ran an engine on its track contrary to its express order, and thereby caused a collision in which the defendant was injured; and it was held that the corporation was liable for the injury. In delivering the opinion of the court, Mr. Justice GRIER said: "The rule of *respondeat superior*, or that the master shall be civilly liable for the tortious acts of his servant, is of universal application, whether the act be one of omission or commission, whether negligent, fraudulent or deceitful. If it be done in the course of his employment, the master is liable; and it makes no difference that the master did not authorize, or even know of the servant's act or neglect, or even if he disapproved or forbade it, he is equally liable, if the act be done in the course of his servant's employment.

The authorities to this point might be multiplied indefinitely; but these are sufficient.

Tried by them, this defence is clearly bad. It is not alleged that the corporation commanded the porter to do the act which caused the injury to the plaintiff, and therefore if it was not done in the course of his employment it is not liable therefor. But if the act

was done in the course of his employment, the corporation is liable to the plaintiff for the injury caused thereby, notwithstanding the order to the porter. The case, so far as appears, must turn on the issue made by the denial of the allegation that the porter was in the discharge of his duty or the course of his employment, at the time he let the pistol fall. And whether he was acting contrary to his employer's orders or not, is altogether immaterial.

In Wharton on Negligence, sec. 157, in discussing this subject the learned author says: "That he who puts in operation an agency which he controls, while he receives its emoluments is responsible for the injuries it incidentally inflicts. Servants are in this sense machinery, and for the defects of his servants within the scope of their employment the master is as much liable as for the defects of his machines."

And Cooley on Torts 539, says: "It is immaterial to the master's responsibility that the servant at the time was neglecting some rule of caution which the master had prescribed, or was exceeding his master's instructions, or was disregarding them in some particular, and that the injury which actually resulted is attributable to the servant's failure to observe the directions given him. In other words, it is not sufficient for the master to give proper directions; he must also see that they are obeyed," and on page 540, the learned author gives an apt illustration of the rule. A farm servant burned over the fallow when the wind was from the west, and thereby destroyed the adjoining premises on the east, although he had been directed on that very account, not to set out the fire unless the wind was in the west, and the master was held responsible.

The cases cited by counsel are not in conflict with this conclusion. They are Wharton on Neg., sec. 168; *Tuller* v. *Voght*, 13 Ill. 285; *Oxford* v. *Peter*, 28 Ill. 435; *Foster* v. *The Essex Bank*, 17 Mass. 508; *Mali* v. *Lord*, 39 N. Y. 381. They are only to the effect, as is said in *Oxford* v. *Peter*, that the master is not liable "for the wilful or malicious acts of the servant, unless it is in furtherance of the business of the master." The conclusion in these cases was not as to the rule of law, but the application of it, whether the act complained of was done in the furtherance of the business of the master, or rather in the course of the servant's employment.

Sometimes this is a very nice question and difficult to deter-

mine, but the rule of law is, I think, undisputed—that where the servant is acting in the course of, or within the scope of his employment, the master is liable for his acts of commission or omission as if they were his own; and this, notwithstanding the servant may have acted contrary to his master's orders.

Whether the fact complained of in this case was within the scope of the porter's employment, on that occasion, will be ascertained from the evidence on the trial of the issue elsewhere made in the case.

The demurrer is sustained.

A distinction not very clear, however, has been made where the injury occurs during the performance of a contract or obligation, and where it sounds entirely in tort. In the former case the master being bound to perform the contract, if he permits it to be done by another he is responsible for the performance. This arises mostly in carriage of passengers for hire. The passenger pays his fare, and the carrier undertakes to carry the passenger to his destination as safely as human foresight can do it, treat him respectfully, and protect him from injury from others in the same conveyance.

In *Brand* v. *Railroad*, 8 Barb. 368, the court said that a passenger on board a stage coach or railroad car, and a person on foot in the street do not stand in the same relation to the carrier. Toward the passenger the liability springs from a contract. Toward the other the carrier is under no obligation but that of justice and humanity. Hence a passenger who is injured by a servant of the carrier, may have a right of action against him, when one not a passenger, for a similar injury would not.

In *Chamberlain* v. *Chandler*, 3 Mason 242, Judge STORY stated that a passenger's contract entitles him to respectful treatment, and expressed the hope that every violation of this right would be visited with its appropriate punishment. In *Nieto* v. *Clark*, 1 Clifford 145, the steward of the ship assaulted and grossly insulted a female passenger, and Judge CLIFFORD, in holding the defendant liable, stated that the contract of all passengers entitles them to respectful treatment and protection against rudeness, and every wanton interference with their persons from all those in charge. In *Railroad* v. *Finney*, 10 Wis. 388, the court said that where the misconduct of the servant causes a breach of the master's contract, he will be liable whether such misconduct be wilful or merely negligent. In *Goddard* v. *Grand Trunk Railroad Co.*, 57 Me. 202; 2 Am. Rep. 39; WALTON, J., stated "the law requires the common carrier of passengers to exercise the highest degree of care that human judgment and foresight are capable of to make his passenger's journey safe. Whoever engages in the business impliedly promises that his passengers shall have this degree of care. In other words, the carrier is conclusively presumed to have promised to do what, under the circumstances, the law requires him to do. We say conclusively presumed, for the law will not allow the carrier, by notice or special contract even, to deprive his passenger of this degree of care. If the passenger does not have such care, but on the contrary, is unlawfully assaulted and insulted by one of the very persons to whom his conveyance is intrusted, the carrier's implied promise is broken, and his legal duty is left unperformed, and

he is necessarily responsible to the passenger for the damages he thereby sustains. The passenger's remedy may be either in assumpsit or tort at his election. In the one case he relies upon the breach of the carrier's common-law duty in support of his action; in the other upon a breach of his implied promise. The form of the action is important only upon the question of damages. In actions of assumpsit the damages are generally limited to compensation. In actions of tort the jury are allowed greater latitude, and in proper cases may give exemplary damages." In *Landreux* v. *Bel*, 5 La. (O. S.), 434, the court said that carriers are responsible for the misconduct of their servants towards passengers to the same extent as for their misconduct in regard to merchandise committed to their care, and that no satisfactory distinction can be drawn between the two cases. In *Croker* v. *The Chicago and Northwestern Railway Co.*, 36 Wis. 357; 17 Am. Rep. 504, the defendants' servant, the conductor on the passenger train, forcibly kissed the plaintiff, a young lady passenger, and in an action to recover for the assault, a verdict for $1000 was sustained; the court, in rejecting the argument that the master is not responsible for the wilful or wanton acts of the servant, such as this was, stated that it was the duty of the company, under its contract with the plaintiff, to protect her from the assault, and if it delegate it to an agent or servant who failed to perform it, it was immaterial whether the failure was accidental, or wilful, or through the negligence or malice of the servant.

Chief Justice SHAW said that the carrier of passengers is liable for injury resulting from the failure, negligence, or wilful, wanton or criminal conduct of the servant in whose charge the passenger has been placed, and that the carrier "is in a condition somewhat similar to that of an innkeeper whose premises are open to all guests," and who "is bound to so regulate his house with regard to the peace and comfort of his guests as to repress and prohibit all disorderly conduct therein:" *Com.* v. *Power*, 7 Metc. 601. In *Weed* v. *Panama Railroad Co.*, 17 N. Y. 362, the defendant was held liable for the wilful or negligent conduct of the conductor in detaining the train over night in an unhealthy locality, whereby the plaintiff became ill from the exposure; and also the plaintiff, while a passenger, was unlawfully assaulted by the steward of the boat and some of the table waiters, a verdict of $8000 against the defendants was sustained; but the court did not place the ground of the recovery on the defendants' duty under the contract, but upon the ground that the assault was committed in course of the servants' employment; remarking that if such servants "had met the plaintiff in the street or elsewhere, in a position wholly disconnected with their duties to the defendant and committed the assault, it is clear that the defendants would not have been liable:" *Bryant* v. *Rich*, 106 Mass. 180.

The question is upon which ground should the liability rest: on the violation of the contract or on the ground that the servant acted within his employment or authority. Besides the foregoing the following cases assert that the ground is the violation of the contract: *Railroad Co.* v. *Blocher*, 27 Md. 277; *Railroad* v. *Hinds*, 53 Pa. St. 512; *Simmons* v. *New Bedford, &c., Steamboat Co.*, 97 Mass. 361; 100 Id. 34; *Railroad* v. *Kinney*, 10 Wis. 388, and in one of the cases, *Pendleton* v. *Kinsley*, the court stated that passengers do not contract merely for transportation, but also contract for good treatment, and against personal rudeness and every wanton interference with their persons.

On the other hand the following cases placed the liability on the ground that the servant acted within his employment.

In *Ramsden et ux.* v. *Boston & Albany Railroad Co.*, 104 Mass. 117, the plaintiff, a female passenger on defendants' train, paid her fare to the conductor, but was soon thereafter called upon to pay again, which she refused, informing the conductor that she had paid him. The conductor denied this, used abusive and insulting language to her, and took hold of, and forcibly wrenched her parasol from her possession. The railroad company was held responsible; GRAY, Justice, stating that "the use of unwarrantable violence in attempting to collect fare of the plaintiff was as much within the scope of the conductor's employment as the exercise or threat of unjustifiable force in ejecting a passenger from the cars. Neither the corporation nor the conductor has any more lawful authority to needlessly kick a passenger or make him jump from the cars when in motion than to wrest from the hands of a passenger, an article of apparel, or personal use, for the purpose of compelling payment of fare. Either is an unlawful assault, but if committed in the exercise of the general power vested by the corporation in the conductor, the corporation as well the conductor is liable to the party injured." In *Peck* v. *N. Y. C. Railroad Co.*, 6 T. & C. 436, the defendants set apart a car for ladies, and gentlemen accompanied with ladies. A brakeman was stationed at the entrance of the cars to direct passengers what car to take. The plaintiff not being accompanied by a lady, entered the car reserved for ladies, and the brakeman directed him to go into another car, which he refused to do, and, thereupon the brakeman forcibly removed him. In an action for the assault the defendants urged that the servant's duty being only to direct which car to take, exceeded his authority, and was not acting within the scope of his employment in forcibly removing the plaintiff, but this was overruled, the court stating that as the brakeman was directed by the person in charge to see that gentlemen without ladies did not enter that car, it was in the performance of that service that he did the act complained of. "The order to the brakeman and his performance (in the manner he did) warrants the conclusion, even as a matter of law, that he was acting within the scope of his employment."

In an English case: *Bayley* v. *Railroad Co.*, L. R., 7 C. P. 415, the plaintiff was violently pulled out of the car by the company's porter, who acted under an erroneous impression that the plaintiff was in the wrong car. The porter's instructions were to direct passengers to the right cars. The court held that this act of the porter was within the scope of his employment, and the company was responsible for the assault.

In *Moore* v. *Railroad*, 4 Gray 465, the plaintiff was forcibly put out of a car for not giving up his ticket or paying his fare, when, in fact, he had already surrendered his ticket to some one employed on the train; the corporation was held liable for the assault. In *Seymour* v. *Greenwood*, 7 H. & N. 354, the plaintiff was assaulted and forcibly taken out of defendant's omnibus by one of the latter's servants, and it was held that the verdict against the defendant was right. In *Railroad* v. *Finney*, 10 Wis. 388, the plaintiff was unlawfully put out of a car by the conductor, the railroad was held liable, the court stating that where the misconduct of the servant causes a breach of the master's contract, the master will be liable whether such misconduct be wilful or merely negligent. In *Railroad* v. *Vandiver*, 42 Pa. St. 365, the passenger received injuries by being thrown from the platform of the car because he refused to pay his fare or show his ticket, he averring that he had a ticket, but could not find it. It was urged that the injuries were the result of force and violence on the part of the servant, which

were not within the scope of the servant's authority, and hence the company was not liable. But the court held otherwise, and said "a railroad company selects its own employees and is bound to employ none but capable, prudent and humane men, and in the present case the company and its agents were all liable for the injury done to the deceased."

In *Railroad Co.* v. *Derby*, 14 How. 468, the servant of the company took an engine and ran it over the road contrary to express orders, and the company was held responsible for the injuries inflicted. In *Railway* v. *Hinds*, 53 Pa. St. 512, some intoxicated persons got into the car and caused a fight, in which the plaintiff below got his arm broken, and the company was held responsible. In *Flint* v. *Trans. Co.*, 34 Conn. 554, the defendant was held liable for injuries inflicted by the discharge of a gun dropped by some soldiers engaged in a scuffle.

The plaintiff in *Isaacs* v. *The Third Avenue Railroad Co.*, 47 N. Y. 122, being a passenger on the car, notified the conductor to stop at Spring street. When there she rang the bell to stop, and passed out on the platform and asked the conductor to stop. He replied that he was stopped enough, she replied that she would not get off until the car came to a full stop, whereupon the conductor placed both of his hands on her shoulder and pushed her off. She fell on the pavement and her leg was broken. The testimony showed that the conductor forcibly, and intentionally pushed the plaintiff off of the car, and the court held that the defendant was *not* liable, the act of the conductor being wilful or wanton, and not within the scope of his employment. This case, however, is against the current of authority, and the cases in the same court: *Drew* v. *Railroad Co.*, 26 N. Y. 49; *Rounds* v. *Railroad*, 5 T. & C. 475; *Shea* v. *Railroad*, 62 N. Y. 180; *Peck* v. *Railroad*, 6 T. & C. 436; *Sanford* v. *Railroad Co.*, 23 N. Y. 343.

On the same ground it was held that the master was liable, and the servant acted within the scope of his authority or employment where he ejected a passenger from the car because he refused to pay an additional sum over and above the fare, although he informed the conductor that he had endeavored to get a ticket, but failed in consequence of the default of the agent: *Railroad Co.* v. *Rogers*, and where the servant who was a freight conductor with orders to allow no one to ride in any freight car, found the plaintiff in one and pushed him off while the train was in motion: *Holmes* v. *Wakefield et al.*, 12 Allen 580, and where the baggage master, under orders to permit no one to ride in the baggage car discovered the plaintiff and ordered him off, and on being refused kicked him off, whereby he was injured: *Rounds* v. *Railroad*, 5 T. & C. 475, and where he ordered a boy, who was riding wrongfully on the car, to jump off while the car was in motion, which the boy did, whereby he was injured: *Lovett* v. *Railroad Co.*, 9 Allen 557, and where the plaintiff desired to cross the street, and for that purpose stepped on the platform of the car which obstructed the crossing, whereupon the driver pushed her off, and she fell and broke her arm: *Shea* v. *Railroad Co.*, 62 N. Y. 180, and where the plaintiff was thrown from the car while in motion upon his refusal to pay his fare: *Sanford* v. *Railroad Co.*, 23 N. Y. 343, and where a passenger was forcibly and violently ejected: *Seymour* v. *Greenwood*, 7 H. & N. 356, and where the servant whose employment was to clean cars and keep persons out, kicked a boy off while the car was in motion, whereby he was killed: *Railroad Co.* v. *Hack*, 66 Ill. 238; and for the wrongful arrest the plaintiff: *Goff* v. *Railroad Co.*, 3 El. & El. 672; *Porter* v. *Railroad Co.*, 41 Iowa 358; *Allen* v. *Railroad Co.*, L. R., 6 Q. B. 65; and see *Poulton* v. *Railroad Co.*, L. R., 2 Q. B. 534; *Mali* v.

Lord, 39 N. Y. 381, and for an assault committed by the servant whilst in charge of his master's business: *Walker* v. *Railroad Co.*, 39 L. J. C. P. 346.

The ground for the liability in all other classes of cases is that the act of the servant is within the scope of his employment, and the distinction that in carriers of passengers it rests on a violation of the contract seems to be against the weight of authority and the reasons for the liability.

Perhaps a better statement of the rule is, that *the master is liable for any act which the servant does whilst doing the business with which the master entrusted him*, whether that act is negligent, careless, unlawful, wilful, wanton, reckless, improper or malicious. "If a servant driving his master's carriage carelessly runs over a bystander, or if a gamekeeper employed to kill game, carelessly fires at a hare and shoots a person passing by; or if a workman employed by a builder in building a house, negligently throws a stone or a brick from a scaffold and so hurts a passer by * * the person injured has a right to treat the wrongful act as the act of the master." Because "if the master himself had driven improperly or fired carelessly, or negligently thrown the stone or brick, he would have been directly responsible, and the law does not permit him to escape liability because the act complained of was not done with his own hand." Lord CRANWORTH in *Bartonhills Coal Co.* v. *Reid*, 3 Macqueen (Sc.) 283. In a late case in Minnesota: *Marrier* v. *St. Paul, Minneapolis & Manitoba Railroad Co.*, 29 Alb. L. J. 255, section men employed by the railroad company in charge of a foreman, built a fire on the right-of-way to warm their dinner, the foreman assisting. The fire was not extinguished, and spread to plaintiff's land and destroyed his hay. The company did not board the workmen. The court held that making the fire for that purpose was not within the employment of the workmen, and hence the defendants were not liable, the court stating that the liability rests upon the maxims *qui facit per alium facit per se* and *respondeat superior*; the *universal* test being, was there authority for doing the act? Was it done in the course and within the scope of the servant's employment, and if it was, the master is liable whether the act was negligent, fraudulent, deceitful or an act of positive malfeasance. The liability does not arise when the servant steps outside of his employment to do an act for himself, not connected with the master's business, and in determining whether or not a particular act is done in the course of the servant's employment, it is proper first to inquire whether the servant was at the time engaged in serving his master. If the servant step aside from his master's business for however short a time to do an act not connected with such business, the relation of master and servant is for that time suspended. Hence the act of these section men in building a fire to warm their own dinner was in no sense an act done in the course of, and within the scope of their employment, or in the execution of the defendants' business. For the time being they had stepped aside from their master's business, and engaged exclusively in their own business as much as they were when eating their dinner, and were for the time being their own masters as much as when they ate their breakfast that morning, or went to bed the night before. The fact that they built the fire on the defendants' right-of-way is immaterial, unless the defendants knew of, or authorized the act. Had they gone on the plaintiff's farm and built the fire, the case would have been precisely the same. It is just the same as if one of these men in lighting his pipe after eating dinner, had carelessly thrown the burning match into the grass. If it was the duty of the

foreman to look after the premises generally, and extinguish fires that might be ignited on them, his omission to put out the fire might possibly, within the case of *Chapman* v. *Railroad*, 33 N. Y. 369, be considered the negligence of the defendant. But nothing of this kind appears. To the same effect is *Woodman* v. *Joiner*, 10 Jur. (N. S.) 852, where the plaintiff permitted the defendant to use his shed for doing a piece of carpentering, and the carpenter employed by the defendant, in lighting his pipe, set the shed on fire, and it was held that the defendant was not liable. But on that part of the opinion in *Murrier* v. *Railroad Co.*, which states that "if the servant step aside from his master's business for however short a time, to do an act not connected with such business, the relation of master and servant is for that time suspended" the case of *McCoun* v. *N. Y. C. Railroad Co.*, 66 Barb. 338, may not fit. In that case a person upon the defendants' engine stepped aside from the work he was engaged in, and threw a burning brand near the plaintiff's land, which set fire to the grass and burned over the plaintiff's land, and the court held the defendant liable.

Another distinction has been attempted to be made in some cases, that the master is not liable for a trespass which results from a violation of his express orders or which he has not expressly assented to: *Lyons* v. *Martin*, 8 Ad. & El. 512; *Bolingbroke* v. *Swindon*, L. R., 9 C. P. 575; *Oxford* v. *Peter*, 28 Ill. 434, as when the servant was directed to drive cattle out of a certain field the master was held not responsible, if the servant drove them elsewhere (*Oxford* v. *Peter*, *supra*), on the ground, perhaps, that in the absence of express authority, the law will not imply authority to do an unlawful act. But this distinction is not tenable, and has been repudiated and the doctrine asserted that within the employment the master is liable for all the acts of the servant whether unlawful or not: *Green* v. *Omnibus Co.*, 7 C. B. N. S. 290; *Goff* v. *Railroad Co.*, 3 El. & El. 672; *Barden* v. *Felch*, 109 Mass. 154; *Fraser* v. *Freeman*, 56 Barb. 234; *Gregory* v. *Piper*, 9 B. & C. 591; *Mansfield* v. *Church*, 20 Conn. 73; *Andrus* v. *Howard*, 36 Vt. 248; *Duggins* v. *Watson*, 15 Ark. 118; *Arthur* v. *Balch*, 23 N. H. 157; *Weldon* v. *Railroad*, 5 Bosw. 576.

JOHN F. KELLY,
Bellaire, Ohio.

Court of Chancery of New Jersey.

CORNELIUS LYDECKER *v.* ANDREW D. BOGERT.

Where a mortgagee of lands recovered a judgment on his bond, sold the mortgaged premises under execution, and purchased them himself, the mortgagor is not, *ipso facto*, entitled to an injunction to restrain him from selling other lands of the mortgagor under his judgment, on the ground that the purchase of the equity of redemption extinguished the mortgage debt, but the mortgagor may enjoin such other sales until it shall have been determined, in this court, whether the mortgagee ought to be permitted to raise any more money, by execution, on account of the debt, and if so, how much.

BILL for injunction. On final hearing.

C. H. Voorhis, for complainant.

C. Christie, for defendant.